

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JEMIMA ORTIZ,

Plaintiff,

v.

SAFEWAY INCORPORATED

Defendant.

No. 2:19-cv-00984-RAJ

**ORDER GRANTING  
MOTION TO DISMISS**

This matter is before the Court on Defendant's motion to dismiss. Dkt. # 13. Having considered the submissions of the parties, the relevant portions of the record, and the applicable law, the Court finds that oral argument is unnecessary. For the reasons stated below, Defendant's motion is **GRANTED**. Dkt. # 13.

**I. BACKGROUND**

On June 25, 2019, *pro se* Plaintiff Jemima Ortiz filed this action against Defendant Safeway Incorporated. Dkt. # 1. In doing so, Plaintiff submitted an application to proceed *in forma pauperis*. The Honorable Mary Alice Theiler granted the application. Dkt. # 5. Plaintiff alleges that she was injured after she slipped and fell

1 while shopping at a Safeway store in Marysville, Washington on July 10, 2016. Dkt. #  
2 6 at 2-3. Safeway moves to dismiss Plaintiff's complaint under Fed. R. Civ. P. 12(b)(5)  
3 for insufficient service of process. Dkt. # 5.

## 4 II. DISCUSSION

5 Under Rule 12(b)(5), a complaint may be dismissed for "insufficient service of  
6 process." Fed. R. Civ. P. 12(b)(5). Once a defendant challenges service of process, the  
7 plaintiff bears the burden of establishing the validity of service of process. *Dillard v.*  
8 *Red Canoe Fed. Credit Union*, 2015 WL 1782083, at \*2 (W.D. Wash. Apr. 17, 2015),  
9 citing *Brockmeyer v. May*, 383 F.3d 798, 801 (9th Cir. 2004). Rule 4(h) describes the  
10 process for serving a corporate defendant:

11 Unless federal law provides otherwise, a domestic or foreign corporation,  
12 or a partnership or other unincorporated association that is subject to suit  
13 under a common name, and is in a judicial district of the United States must  
be served:

14 (A) in the manner prescribed by Rule 4(e)(1) for serving an individual;  
or

15 (B) by delivering a copy of the summons and of the complaint to an  
16 officer, a managing or general agent, or any other agent authorized by  
17 appointment or by law to receive service of process and-if the agent is  
18 one authorized by statute and the statute so requires-by also mailing a  
copy of each to the defendant.

19 Fed. R. Civ. P. (h)(1).

20 If a plaintiff elects to serve the corporation pursuant to Rule 4(e)(1) she may do  
21 so by "following state law for serving a summons in an action brought in courts of  
22 general jurisdiction in the state where the district court is located or where service is  
23 made." Fed. R. Civ. P. 4(e)(1). The procedures for serving a corporate defendant under  
24 Washington law are similar to the federal rules:

25 If against a company or corporation other than those designated in  
26 subsections (1) through (8) of this section, to the president or other head  
27 of the company or corporation, the registered agent, secretary, cashier or  
managing agent thereof or to the secretary, stenographer or office assistant

1 of the president or other head of the company or corporation, registered  
2 agent, secretary, cashier or managing agent.

3 RCW 4.28.080. Under Fed. R. Civ. P. 4(m), service must be completed within 90 days  
4 after the complaint is filed or the defendant may move to dismiss. Similarly, under  
5 Washington law, an action must be commenced within 90 days from when the  
6 complaint is filed, or summons is served (whichever occurs first) in order to toll the  
7 statute of limitations. *See* RCW 4.16.170.

8 Defendant argues that because Plaintiff failed to properly serve Safeway within  
9 90 days of filing her complaint, Plaintiff's claim is now barred under the statute of  
10 limitations. The Court agrees. Plaintiff alleges she was injured while shopping at  
11 Safeway on July 10, 2016. Dkt. # 6. In Washington, the statute of limitations for this  
12 action is three years. *See* RCW 4.16.080. Plaintiff filed her complaint on June 25,  
13 2019, just days before the statute of limitations expired. But merely filing the complaint  
14 was not sufficient to toll the statute of limitations. Under RCW 4.16.170, an action is  
15 only deemed "commenced" for purposes of tolling the statute of limitations if the  
16 plaintiff serves the defendant within 90 days of the date of filing the complaint. Thus,  
17 the statute of limitations in this case did not toll until Plaintiff properly served Safeway.  
18 *See O'Neill v. Farmers Ins. Co. of Wash.*, 125 P.3d 134, 137 (2004).

19 Although Plaintiff's first service attempt to Defendant's counsel was timely, it  
20 was ultimately ineffective because Safeway's counsel was not authorized to accept  
21 service on Safeway's behalf. *See* Dkt. # 14. As a result, Plaintiff's action never  
22 officially "commenced" for the purposes of tolling the statute of limitations and the  
23 statute of limitations has now expired.<sup>1</sup>

24 Ordinarily, in cases such as these where the plaintiff is proceeding *pro se*, the  
25 Court would grant Plaintiff an extension of time within which to properly effectuate  
26 service. In this case, however, an extension would be futile since Plaintiff's claim is

---

27 <sup>1</sup> Plaintiff's second, September 26, 2019, service attempt was made after the statute of  
limitations expired. Dkt. # 20 at 2.

1 now time barred. The Court's hands are tied. Defendant's motion to dismiss is  
2 **GRANTED**. Dkt. # 13. Plaintiff's complaint is **DISMISSED** with prejudice.  
3 Plaintiff's motion to continue argument is **TERMINATED** as moot. Dkt. # 21.  
4

5 DATED this 26th day of March, 2020.  
6

7   
8

9 The Honorable Richard A. Jones  
10 United States District Judge  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27